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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

BUCKEYE TREE LODGE AND SEQUOIA VILLAGE INN, LLC, a California limited liability company, 2020 O STREET CORPORATION, INC, D/B/A THE MANSION ON O STREET, PROSPECT HISTORIC HOTEL, and SHILOH MORNING INN, LLC, a Oklahoma limited liability company, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

VS.

EXPEDIA, INC., a Washington corporation; HOTELS.COM, L.P., a Texas limited partnership; HOTELS.COM GP, LLC, a Texas limited liability company; ORBITZ, LLC, a Delaware limited liability company,

Defendants.

Case No. 3:16-CV-04721-VC

CLASS ACTION

SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT FOR DAMAGES, PENALTIES, RESTITUTION, INJUNCTIVE RELIEF AND OTHER EQUITABLE RELIEF

1. Violation of the Lanham Act, 15 U.S.C. § 1125 (False Association)
2. Violation of the Lanham Act, 15 U.S.C. § 1125 (False Advertising)
3. Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Competition)
4. Violation of California Business & Professions Code §§ 17500, *et seq.* (False Advertising)
5. Unjust Enrichment and Restitution

[Demand for Jury Trial]

1 Plaintiffs Buckeye Tree Lodge and Sequoia Village Inn, LLC (“Buckeye Tree Lodge”), 2020 O
 2 Street Corporation, Inc. D/B/A The Mansion on O Street (“The Mansion”), Prospect Historic Hotel
 3 (“Prospect”), and Shiloh Morning Inn, LLC (“Shiloh”) (together, “Plaintiffs”) on behalf of themselves
 4 and all others similarly situated, allege upon personal knowledge, information and belief as follows:

5 **I. NATURE OF ACTION**

6 1. This action is to enjoin and obtain damages and restitution stemming from a classic bait
 7 and switch marketing scheme that Expedia has used worldwide. Defendants (hereinafter “Expedia”) run
 8 a network of on-line travel services and websites under popular brands like Hotels.com, Expedia.com,
 9 Orbitz.com, Travelocity.com, (collectively, “Expedia”). Expedia baits consumers with on-line deals for
 10 vacation and hotel stays at the Plaintiffs and other Class Member hotels, even though these hotels are not
 11 affiliated with Expedia or do not reveal their vacancy rate to Expedia. In fact, Expedia has no way to book
 12 these hotels.

13 2. After Expedia baits consumers with the false impression that they can book these hotels
 14 through its websites, the switch begins. Expedia’s websites falsely or recklessly indicate that there is no
 15 availability at the hotel, but then pushes the consumers to “deals” at Expedia’s nearby member hotels with
 16 whom it is authorized to sell rooms and who pay Expedia a fee for every room booked through its websites.

17 3. Expedia’s deceit is brazen and comprehensive. Expedia posts fake telephone numbers for
 18 Plaintiffs and other Class Member hotels to divert callers to Expedia’s own operators, who then try to
 19 book the consumers at Expedia member hotels.

20 4. Worse, Expedia targets social media advertisements –***for hotels it cannot book*** – to those
 21 consumers, using the brands of Class Member hotels to divert business from them to Expedia members.

22 5. Believing Expedia’s representation or innuendo that there is no availability at a Class
 23 Member hotel, consumers take their business to Expedia member hotels. Then, the bait and switch is
 24 complete.

25 6. Expedia’s conduct violates the Lanham Act (15 U.S.C. § 1125), California Business and
 26 Professions Code §§ 17200, *et seq.* and 17500, *et seq.*, and constitutes unfair competition, false
 27 advertising, and false affiliation.

1 **II. JURISDICTION**

2 7. This Court has subject matter jurisdiction over Plaintiffs' Lanham Act claims pursuant to
 3 28 U.S.C. § 1331.

4 8. This Court has supplemental subject matter jurisdiction over Buckeye Tree Lodge's state
 5 law claims pursuant to 28 U.S.C. § 1367.

6 9. This Court also has subject matter jurisdiction under the Class Action Fairness Act, 28
 7 U.S.C. § 1332(d), because there are more than 100 putative class members, the amount in controversy
 8 exceeds \$5 million, and there is minimal diversity. Plaintiff Buckeye Tree Lodge, a California citizen,
 9 Plaintiff The Mansion, a Washington, D.C. citizen, Plaintiff Prospect, a Oregon citizen, and Shiloh, an
 10 Oklahoma citizen, are diverse from Defendant Expedia, Inc., a Washington citizen, Defendant
 11 Hotels.com, L.P., a Texas citizen, Defendant Hotels.com GP, LLC, a Texas citizen, Orbitz, LLC, a
 12 Delaware citizen.

13 **III. VENUE**

14 10. This Court is the proper venue for this action pursuant to 28 U.S.C. § 1391(b). Defendants
 15 reside in this District under 28 U.S.C. § 1391(c); a substantial amount of the events giving rise to the
 16 claims occurred in this District, including in San Francisco; and there are Class Members who operate
 17 hotels and suffered damages in this District, including in San Francisco.

18 **IV. PARTIES**

19 11. Plaintiff Buckeye Tree Lodge and Sequoia Village Inn, LLC is a California limited liability
 20 company.

21 12. Plaintiff The Mansion is a corporation organized under the laws of Washington, D.C. with
 22 its principal place of business located in Washington, D.C.

23 13. Plaintiff Prospect Historic Hotel is a business entity formed under the laws of the State of
 24 Oregon, with its principal place of business location in Prospect, Oregon.

25 14. Plaintiff Shiloh Morning Inn, LLC is a limited liability company formed under the laws of
 26 the State of Oklahoma, with its principal place of business located in Ardmore, Oklahoma.

27 15. Defendant Expedia, Inc. is a Washington corporation with its headquarters in Bellevue,
 28 Washington. In 2015, Expedia, Inc. recorded gross bookings of \$60,830,000,000.00 and has an estimated

1 75% market share among United States online travel agencies.

2 16. Defendant Hotels.com, L.P. is a Texas limited partnership with its headquarters in Dallas,
 3 Texas. Hotels.com, L.P. also has offices in Bellevue, Washington, which it shares with Expedia, Inc. and
 4 other defendants.

5 17. Defendant Hotels.com GP, LLC is a Texas limited liability company with its headquarters
 6 in Bellevue, Washington, which it shares with Expedia, Inc. and other defendants. Hotels.com GP, LLC
 7 is the general partner of Hotels.com, L.P.

8 18. Defendant Orbitz, LLC is a Delaware limited liability company with offices in Chicago,
 9 Illinois. Orbitz, LLC also has offices in Bellevue, Washington, which it shares with Expedia, Inc. and
 10 other defendants.

11 19. Plaintiffs are informed and believe, and based thereon allege, that each and all of the acts
 12 and omissions alleged herein were performed by, or are attributable to, each of the named Defendants,
 13 each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and
 14 all Defendants were in accordance with, and represent the official policies of each of the named
 15 Defendants.

16 20. Plaintiffs are informed and believe, and based thereon allege that, at all times herein
 17 mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein.
 18 At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of
 19 each and all the other Defendants in proximately causing the damages herein alleged.

20 21. Plaintiffs are informed and believe, and based thereon allege, that each of said Defendants
 21 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
 22 and transactions alleged herein.

23 **V. STANDING**

24 22. Plaintiffs have standing to bring the claims alleged in this complaint because, as further
 25 detailed below, Defendants' wrongful conduct proximately caused Plaintiffs to suffer injuries to their
 26 commercial interest, reputation and sales.

1 **VI. FACTUAL BACKGROUND**

2 **European Legal Proceedings Concerning Expedia's Misleading Marketing Practices**

3 23. Expedia is well aware of the deceptive nature of its marketing practices. In 2011, Expedia
 4 “was fined 367,000 euros (\$484,000) for engaging in ‘misleading marketing practices’ related to a French
 5 hotel and restaurant association.” (<http://www.bizjournals.com/seattle/blog/techflash/2011/10/expedia-fined-for-misleading-french.html>; *see also* <http://australia.etbtravelnews.global/117620/expedia-fined-for-misleading-the-french-3/>). The entities sued Expedia, alleging that the company “advertised reduced
 6 rates at hotels without their consent, showed available rooms as booked and drove traffic to third-party
 7 bookers.” (<http://www.bizjournals.com/seattle/blog/techflash/2011/10/expedia-fined-for-misleading-french.html>).

8 24. The French Directorate General for Competition, Consumption and Repression of Fraud
 9 “found the company had used unfair business practices on its Expedia.fr site”
 10 (<http://www.bizjournals.com/seattle/blog/techflash/2011/10/expedia-fined-for-misleading-french.html>),
 11 and joined the lawsuit, alleging that Expedia engaged in misleading practices including:

- 12 • Using Tripadvisor reviews to redirect traffic to Expedia and Hotels.com and not a hotel’s
 13 website.
- 14 • Displaying a hotel as “full on requested dates”, when in fact rooms were available, and
 15 suggesting other nearby available properties having better commercial terms with
 16 Expedia.
- 17 • Incorrectly displaying hotel phone numbers so users could not call a hotel directly.

18 (<https://www.tnooz.com/article/expedia-hit-with-major-fine-in-france-over-misleading-marketing/>; *see*
 19 *also* <https://www.tnooz.com/article/french-government-joins-legal-threat-against-tripadvisor>) The fine
 20 was awarded to the damaged hotels and Expedia told the agency that it would retrain its employees to
 21 avoid repetition of the censured conduct.

22 25. In July 2011, a French Court found that it was misleading for Expedia to state on its website
 23 that no rooms were available for a hotel based only on whether Expedia had rooms available to sell at the
 24 hotel, and not on the hotel’s actual availability. (*See* <https://www.legalis.net/jurisprudences/tribunal-de-commerce-de-paris-15eme-chambre-jugement-du-4-octobre-2011/>; *and* https://translate.google.com/translate?sl=auto&tl=en&js=y&prev=_t&hl=en&ie=UTF-8

1 [8&u=https%3A%2Fwww.legalis.net%2Fjurisprudences%2Ftribunal-de-commerce-de-paris-15eme-chambre-jugement-du-4-octobre-2011%2F&edit-text=&act=url](https://www.legalis.net/jurisprudences/tribunal-de-commerce-de-paris-15eme-chambre-jugement-du-4-octobre-2011&edit-text=&act=url) (Google translation of transcription of
 2 the judgment provided by preceding citation)). The Court's order indicates that it was undisputed that the
 3 information that was given as to the availability of rooms on expedia.fr sites did not reflect the real
 4 situation of booking at the plaintiff hotels and that his happened to other hotels as well. Following the
 5 ruling, Expedia represented that it had revised information on its French website and conducted employee
 6 training. (See <https://www.tnooz.com/article/expedia-hit-with-major-fine-in-france-over-misleading-marketing/>). Despite this, Plaintiffs are informed and believe that Expedia has continued this misleading
 7 practice in the United States for more than six years.

8

9

10 **Defendants Exercised Similar Deceptive Practices in Canada**

11 26. In May, 2018, the Canadian Broadcasting Company aired a TV exposé and published a
 12 news article about two or more British Columbia inns that were falsely shown on Expedia for some years
 13 as having no vacancies. Expedia told the TV station that it had experienced coding errors that had been
 14 corrected recently and only after the CBC contacted them, despite repeated complaints from the Canadian
 15 innkeepers. The following are links to the broadcast and to a written version of the story. (See Eric
 16 Rankin, *No room at the inn: Small B.C. lodge claims Expedia listed 'rooms unavailable' for 2 years*, CBC
 17 News, May 15, 2018, <https://www.cbc.ca/news/canada/british-columbia/no-room-at-the-inn-small-b-c-lodge-claims-expedia-listed-rooms-unavailable-for-2-years-1.4648991>; *Expedia challenged by a small B.C. inn*, CBC News, May 15, 2018, <https://www.cbc.ca/news/thenational/expedia-challenged-by-a-small-b-c-inn-1.4664864>).

18

19

20 **Defendants Lure Consumers With False Google Ads**

21 27. Defendants own and operate various websites that they identify as their brands, including,
 22 but not limited to, Expedia.com, Hotels.com, Orbitz.com, Travelocity.com (collectively, the "Websites").

23 28. Through these Websites, Defendants offer travel services to consumers in this District,
 24 throughout California and the United States, and across the world.

25 29. For a fee, hotels and vacation lodges can sign up to be members of Defendants' websites.

26 30. Plaintiffs and many Class Members are not partners of Defendants' websites or otherwise
 27 affiliated with Defendants. Plaintiffs and, on information and belief, the Class Members have not

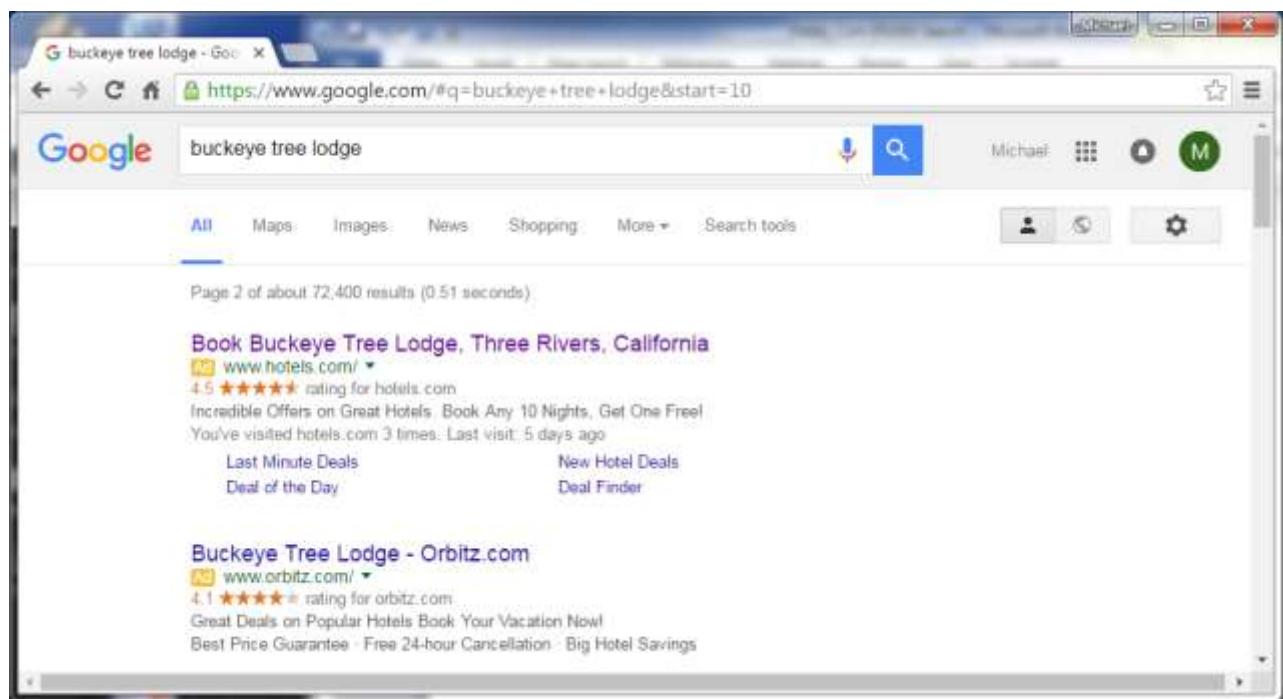
1 consented to the Defendants' use of their names, marks or any information concerning their booking,
 2 accommodations or availability.

3 31. Plaintiffs and, on information and belief, the Class Members, own their names and marks.

4 32. Defendants push "deals" for stays at their partner hotels and lie about the availability of
 5 rooms at non-partner hotels. Consumers visiting these Websites have no way of knowing which hotels are
 6 partners and which are not.

7 33. Defendants purchase false and misleading advertisements on internet search engines like
 8 Google, to funnel traffic to their Websites.

9 34. For example, when a consumer uses Google to search for the Buckeye Tree Lodge, the
 10 engine's top result returns an advertisement purchased by Defendants to "Book Buckeye Tree Lodge" and
 11 promising "Incredible Offers on Great Hotels. Buckeye Tree Lodge."



24 35. Similarly, during the last four years and before, when a consumer used Google to search
 25 for The Mansion on O Street, the engine's top result returns an advertisement purchased by Defendants
 26 to book rooms at The Mansion but customers who clicked on the link would ultimately be advised that
 27 The Mansion was sold out. Despite complaints, this harmful behavior by Expedia happened repeatedly.
 28

1 36. During the last four years and before, Defendant falsely stated on their Websites that The
 2 Mansion was sold out or unavailable for specified dates notwithstanding that, in fact, rooms were available
 3 during those time frames. The Websites contained links directing customers to different (presumably,
 4 partner) hotels that Defendants actually had agreements or affiliations with.

5 37. As recently as September 2016, Defendants' Websites represented to online consumers
 6 that The Mansion was unavailable for certain dates despite The Mansion having rooms available, causing
 7 The Mansion to lose business.

8 38. Numerous consumers contacted The Mansion after making reservations at partner hotels
 9 based on Defendants' false representation that The Mansion has no rooms available. These consumers
 10 indicated that they would have booked rooms at The Mansion but for Defendants' misrepresentation. As
 11 a result, The Mansion suffered actual monetary losses.

12 39. Despite repeated complaints by The Mansion, Expedia's inappropriate dealings with The
 13 Mansion's would-be customers was repeated. Expedia's most recent promise to remedy the situation was
 14 made in October 2016.

15 40. Similarly, during the last four years and before, when a consumer used Google to search
 16 for Prospect, Defendants obtained a link to the Websites offering to book Prospect on the Websites, but
 17 customers who clicked on the link would ultimately be advised that Prospect was sold out. The same
 18 pattern occurred with consumer searches for Shiloh.

19 41. During the last four years and before, Defendant falsely stated on their Websites that
 20 Prospect was sold out or unavailable for specified dates notwithstanding that, in fact, rooms were available
 21 during those time frames. The Websites contained links directing customers to different (presumably,
 22 partner) hotels that Defendants actually had agreements or affiliations with. The same pattern occurred
 23 with consumer searches for Shiloh.

24 42. Plaintiffs allege on information and belief that Defendants had a pattern and practice, when
 25 available, to purchase similarly deceptive advertisements on Google and other search engines regarding
 26 the Class Members (collectively, the "Google Advertisements").

27 43. The Google Advertisements were false, misleading and omitted material facts necessary to
 28 make them not misleading because they stated or implied that Defendants had an affiliation with the Class

1 Members and that Defendants could book stays at the Class Members' hotels on behalf of consumers.

2 44. In truth, at all relevant times, Defendants had no affiliation with Plaintiffs and many Class
3 Members, and/or Defendants had no way to actually book stays at Plaintiffs or at many of the Class
4 Members' hotels on behalf of consumers.

5 45. Expedia obtains hotel names and information from room wholesalers or travel agents or
6 tour operators and without informing the affected hotels and obtaining their approval of what will occur,
7 uses those hotels names and data for bait and switch purposes or occasionally to obtain unauthorized mark-
8 ups from travelers that do not show up on the records of the hotel.

9 46. The Google Advertisements funneled consumers away from legitimate websites that could
10 book rooms at Plaintiffs and at the Class Members and lured consumers onto Defendants' Websites, where
11 Defendants' unlawful conduct continued.

Defendants' Unfair and Fraudulent Practices on the Websites

13 47. At all relevant times, when a consumer searches for Class Members on Defendants'
14 Websites, the Websites prompt consumers to enter prospective travel dates to check for room availability.

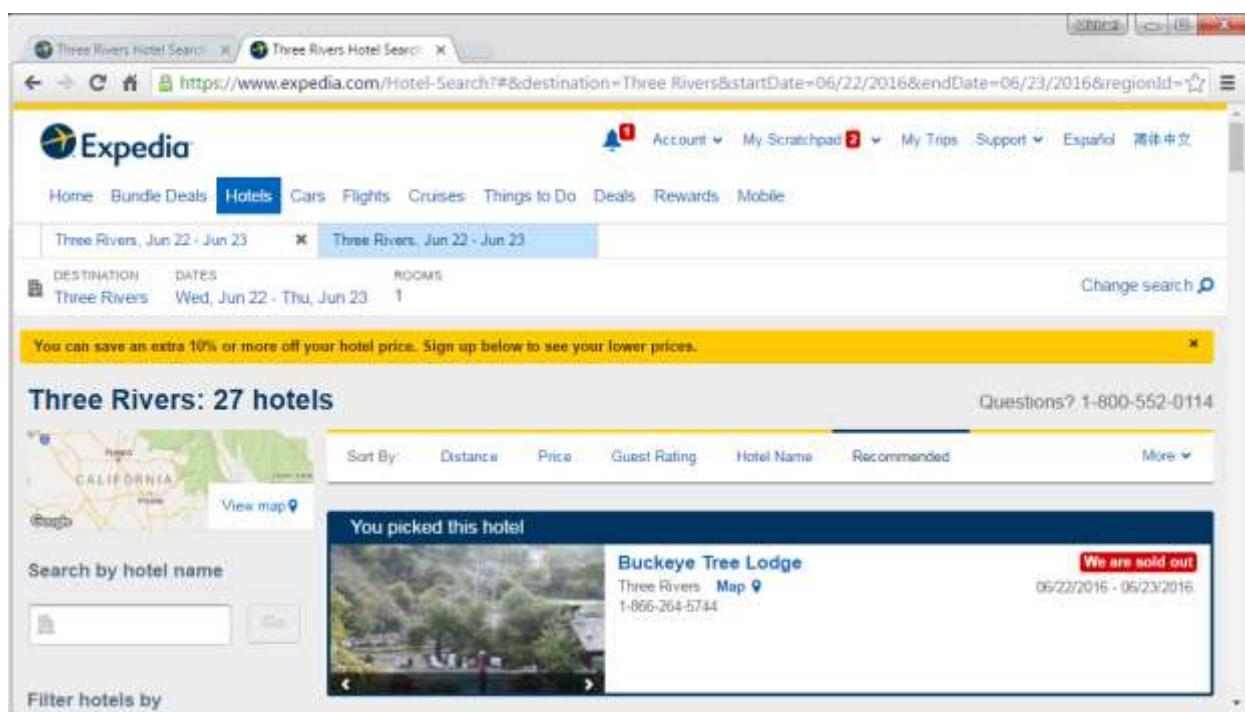
15 48. Defendants' travel date searches are misleading in that they falsely lead consumers to
16 believe that Defendants have an affiliation with Plaintiffs and the Class Members and that Defendants can
17 book stays with Plaintiffs and the Class Members on behalf of travelers.

18 49. Plaintiffs allege on information and belief that after baiting consumers to enter their
19 prospective travel dates, Defendants' Websites, as a standard practice, represent that there are "no rooms
20 available" at the Plaintiffs or Class Member hotels, that Plaintiffs and Class Members are "sold out," or
21 that there are "no deals available at this time" at the Plaintiffs and Class Members, regardless of the actual
22 vacancy rates.

23 ///

24 ///

25 ///



14 50. In returning these false and misleading “sold out” search results, Defendants use the names
 15 and addresses of the Plaintiffs and Class Members together with phone numbers they control and program.
 16 These phone numbers do not connect would be travelers to the Plaintiffs and Class Members. Instead,
 17 these phone numbers are owned and operated by Defendants, with scripts that do not mention calling the
 18 desired hotel but instead recommend other hotels offering better terms to Expedia.

19 51. At the same time that the Websites return false and misleading “sold out” search results
 20 with phony 800 numbers for the Plaintiffs and Class Members, the Websites offer “deals” at their partner
 21 hotels during the same travel dates.

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4 Availability in Three Rivers is low on your dates. Try a similar property like the "Buckeye Tree Lodge" which still has rooms
available.

5

6  Sierra Lodge ★★
Three Rivers [Map](#) 
3.4 out of 5 (776 reviews)
1-866-267-9053 • Expedia Rate
Booked in the last 5 hours
8 people booked this hotel in the last 48 hours

7

8 In high demand!
We have 2 left at
\$209 \$98
Sale!

9  Earn 216 points

10  Rio Sierra Riverhouse ★★
Three Rivers [Map](#) 
1-866-272-4856

11 Very good! 4.1/5
(16 reviews)
In high demand!
We have 1 left at
\$185

12  Earn 457 points

13  Western Holiday Lodge Three Rivers ★★
Three Rivers [Map](#) 
3.3 out of 5 (1062 reviews)
1-866-276-6393 • Expedia Rate  Free Cancellation
Booked in the last 7 hours
9 people booked this hotel in the last 48 hours

14 We have 3 left at
\$110 \$85
 Book Now, Pay Later

15  Earn 187 points

21 52. Plaintiffs allege on information and belief that at all relevant times, when consumers call
22 the fake phone numbers, Defendants' operators confirm there is no availability at the Plaintiffs' and Class
23 Members' hotels (regardless of their actual vacancy rates) and offer to book stays at nearby Defendants'
24 partner hotels.

25 **Defendants Continue Pursing Consumers with False Social Media Ads**

26 53. If a consumer does not immediately book a room through the Websites, Defendants
27 continue pursuing their business with misleading social media advertisements.

54. For example, at all relevant times, Defendants ran targeted Facebook advertisements that would encourage consumers to “Book Buckeye Tree Lodge Now!” after the consumer has searched for Buckeye Tree Lodge on Defendants’ Websites.



55. At all relevant times, Defendants also ran targeted Twitter advertisements that would encourage consumers to book Buckeye Tree Lodge through them after searching Defendants' Websites.

56. Plaintiffs allege on information and belief that Defendants had a policy and practice of running targeted advertisements on Facebook, Twitter and other social media platforms referring to Plaintiffs and the Class Members (collectively, the “Facebook Advertisements”) in an effort to mislead consumers and get them to return to the Websites to book with Defendants’ partner hotels.

Other Complaints About Expedia

57. Evidencing the impact of Defendants' plan and scheme, other hotels and customers have complained that they were lured by Defendants' bait and switch marketing scheme.

58. Set forth below is a small sample of complaints made on the Internet regarding Defendants' fraudulent scheme (sic throughout):

- “Expedia did the same thing to our hotel. After we discontinued doing business with them because of commission over billing, they continued to list our property on their web site prominently but showed no rooms available when it was clicked. That went on for many months despite repeated requests to remove us from their site. After they finally removed us we then discovered that they had a paid listing for our hotel on Google that

1 was posted ahead of our own web site. It looked like it was a posting for our own web
 2 site but when clicked, it went to Expedia which said no rooms were available. Our own
 3 web site business suffered because of it. I hope the law suit brings public attention to how
 4 the public is paying millions in increased lodging rates just to line the pockets of OTAs
 5 who are allowed to use such tactics to force hotels into paying them commissions.”
 6 (http://www.geekwire.com/2016/hotel-operator-accuses-expedia-stealing-customers-misleading-ads-brazen-bait-switch/#disqus_thread)

- 7 • “Expedia and its many affiliates, including Hotels.com and Venere.com, invite people to
 8 come to their sites to book our hotel, the Luna Blue Hotel in Playa del Carmen
 9 Mexico. Yet when people get to these websites they are told that our hotel is completely
 10 occupied for all dates now and in the future. If someone calls on the telephone, they are
 11 told that our hotel is going out of business! They are then directed to book another more
 12 expensive hotel, which provides Expedia greater commission. It seems that Expedia and
 13 its affiliates use small hotels like ours to attract people to their sites so they can get those
 14 people to book with bigger resorts. It is the classic ‘bait and switch’ scam.”
 15 (<https://playazone.wordpress.com/2012/12/04/expedia-bad-for-the-traveler-bad-for-the-hotel/>)
- 16 • “[A] Google search for the Luna Blue Hotel shows its Expedia page on the first page of
 17 results — which of course says that the hotel has no availability, ever. *The Verge* also
 18 called Expedia’s 1-800 number and attempted to book that way; we were told the hotel
 19 has no availability through the end of 2013 and were encouraged to book at another hotel
 20 in the area. Head believes Expedia is using the boutique hotel’s page to draw customers
 21 in and then push them to more expensive hotels after falsely claiming that the Luna Blue
 22 is sold out.” (<http://www.theverge.com/2012/12/28/3809328/one-small-hotels-long-nightmare-with-expedia>)
- 23 • “just had 3 phone calls with @Expedia - claimed they would help me extend a hotel
 24 stay, then said it was sold out. there is still rooms. smh.”
 25 (<https://twitter.com/moxieingreen/status/680084034660249600>)
- 26 • “Don’t trust Expedia. Last weekend we had a funeral to go to. Called Expedia to make a
 27 reservation at the hotel we chose. They refused to answer whether or not there was a
 28 vacancy at the hotel but instead tried and tried to up sell us someplace else. Finally, after
 29 being asked at least six times, the woman answered my question and said there was no
 30 availability at the hotel we chose. We called the hotel directly and they told us they had
 31 rooms. They were very surprised to learn that Expedia said there were none. We didn’t
 32 need this runaround at what was already a rough time for us. This is a scam.”
 33 (<https://www.facebook.com/expedia/posts/10152620595347680>)

25 VII. CLASS ALLEGATIONS

26 59. **Classes:** Plaintiffs bring their claims on behalf of the following classes of persons, as
 27 alleged more specifically in each claim for relief set forth herein:

1 a. **National Class:** Pursuant to Fed. R. Civ. P. 23, Plaintiffs seek to certify a class of
 2 the following persons:

3 All hotels, lodges, inns, and motels located in the United States that did not have a
 4 booking agreement with Defendants, but whose names appeared on Expedia.com,
 5 Hotels.com, Orbitz.com, or Travelocity.com (the “Websites”), or on search engine
 6 links to the Websites, from August 17, 2012 to the present.

7 b. **California Sub-Class:** Pursuant to Fed. R. Civ. P. 23, Plaintiffs seek to certify a
 8 sub-class of the following persons:

9 All California-based hotels, lodges, inns, and motels that did not have a booking
 10 agreement with Defendants, but whose names appeared on Expedia.com,
 11 Hotels.com, Orbitz.com, or Travelocity.com (the “Websites”), or on search engine
 12 links to the Websites, from August 17, 2012 to the present.

13 60. **Class Period:** The class period for the National Class and California Sub-Class is the time
 14 period from four (4) years preceding the filing of the original Complaint in this action, up to and through
 15 the time of trial for this matter.

16 61. **Excluded from the Classes:** Excluded from the classes are Defendants, their corporate
 17 parents, subsidiaries and affiliates, officers and directors, any entity in which any Defendant has a
 18 controlling interest, and the legal representatives, successors, or assigns of any such excluded persons or
 19 entities, and Plaintiffs’ attorneys. Also excluded are any judges presiding over these proceedings and their
 immediate family.

20 62. **Numerosity:** The class members are so numerous that joinder of all members is
 21 impracticable. While the exact numbers of class members are unknown to Plaintiffs at this time, Plaintiffs
 22 are informed and believe that the classes consist of more than one hundred individuals. Members are
 23 readily ascertainable through appropriate discovery from records maintained by Defendants and their
 24 agents.

25 63. **Common Questions of Law and Fact Predominate:** Questions of law and fact common
 26 to the Class predominate over questions affecting only individuals, including:

27 a. What algorithms Defendants used on their Websites to return search results to
 28 consumers;

- 1 b. Whether Defendants' search engines accessed actual vacancy rates of their non-
- 2 partner hotels;
- 3 c. How Defendants used smart technology to track consumer search history;
- 4 d. Whether Defendants online advertisements were part of a pattern and practice to
- 5 divert business unfairly toward their partner hotels;
- 6 e. Whether Defendants' offers to book stays at hotels with whom they had no
- 7 affiliation violated the Lanham Act, 15 U.S.C. § 1125(a)(1)(A);
- 8 f. Whether Defendants' use of Plaintiffs' and Class Members' names and identifying
- 9 information violated section 43(a) of the Lanham Act;
- 10 g. Whether Defendants' false representation that Plaintiffs' and Class Members'
- 11 hotels were sold out, had no rooms available or had no deals violated section 43(a)
- 12 of the Lanham Act;
- 13 h. Whether Defendants' systematic acts and practices violated California Business
- 14 and Professions Code §§ 17200 *et seq.*;
- 15 i. Whether Defendants' systematic acts and practices violated California Business
- 16 and Professions Code §§ 17500 *et seq.*;
- 17 j. Whether Defendants were unjustly enriched under California law;
- 18 k. Whether restitution, lost profits or another damages measure is most appropriate to
- 19 compensate Plaintiffs and the Class Members; and
- 20 l. Whether Defendants' conduct should be enjoined.

21 64. **Typicality:** Plaintiffs' claims are typical of other Class Members' claims. Like the other
 22 Class Members, Plaintiffs were subjected to Defendants' common advertising and website policies and
 23 practices. Defendants' representations, advertisements and treatment of Plaintiffs were and are typical of
 24 those of other Class Members.

25 65. **Adequacy:** Plaintiffs can fairly and adequately represent the Class's interests. They have
 26 no conflicts of interest with other Class Members, and have retained counsel who are competent and
 27 experienced in class actions and unfair competition litigation.

28 66. **Superiority:** The nature of this action and the nature of laws available to Plaintiffs and the

Class make the use of the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiffs and the Class for the wrongs alleged because:

- a. The individual amounts of damages involved, while not insubstantial, are such that individual actions or other individual remedies are impracticable and litigating individual actions would be too costly and burdensome;
- b. This case involves a small number of tight knit Defendants operating four Websites under a common scheme, and a large number of individual small and medium size hotels and lodges with many relatively small claims with common issues of law and fact; and
- c. If each class member were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual class member.

VIII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

(False Association and Trademark Infringement)

(By Plaintiffs and the National Class Members Against All Defendants)

67. Plaintiffs incorporate every preceding paragraph as if fully set forth herein.

68. In acting as alleged above, Defendants violated section 43(a) of the Lanham Act (15 U.S.C. (a)(1)(A)), in connection with on-line travel and booking services, by using in commerce words, names, or symbols, or a combination thereof, which were likely to cause confusion, mistake or deception as to the affiliation, connection, or association of Defendants with Plaintiffs and the National Members, or as to the origin, sponsorship, or approval of their services or commercial activities.

69. In acting as alleged above, Defendants also violated section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)(1)(A)), in connection with on-line travel and booking services, by using in commerce false designations of origin, false or misleading descriptions of fact, or false or misleading representations of fact, which were likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Defendants with Plaintiffs and the National Class Members, or as to the origin, sponsorship,

or approval of their services or commercial activities.

70. Defendants' misrepresentations and actions in violation of 15 U.S.C. § 1125(a)(1)(A) proximately caused an injury to a commercial interest in sales or business reputation of Plaintiffs and the National Class Members.

71. Defendants' misrepresentations and actions in violation of 15 U.S.C. § 1125(a)(1)(A) have also deprived and will continue to deprive Plaintiffs and the National Class Members of the ability to control the consumer perception of its products and services offered under their names and marks, placing the valuable reputation and goodwill of Plaintiffs and the National Class Members in the hands of Defendants.

72. Defendants had direct and full knowledge of Plaintiffs' and the National Class Members' prior use of and rights in their names and marks before the acts complained of herein. The knowing, intentional and willful nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. § 1117(a).

73. Accordingly, pursuant to 15 U.S.C. § 1117, Plaintiffs and the National Class Members are entitled to recover: (1) Defendants' profits, or an amount that is adequate, which the Court finds to be just according to the circumstances of the case, as compensation; (2) the damages sustained by Plaintiffs and the National Class Members, in a sum above the amount found as actual damages, not exceeding three times such amount; (3) the costs of the action; and (4) reasonable attorney fees.

74. As a result of Defendants' aforesaid conduct and in addition to other damages, Plaintiffs and the National Class Members have suffered the continuing loss of the goodwill and reputation established by their names and marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Plaintiffs and the National Class Members have no adequate remedy at law. Plaintiffs and the National Class Members will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

SECOND CLAIM FOR RELIEF

Violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B)

(False Advertising and Trademark Infringement)

(By Plaintiffs and the National Class Members Against All Defendants)

1 75. Plaintiffs incorporate every preceding paragraph as if fully set forth herein.

2 76. In acting as alleged above, Defendants violated section 43(a) of the Lanham Act (15 U.S.C.
 3 § 1125(a)(1)(B)), in connection with on-line travel and booking services, by using in commerce words,
 4 terms, names, or symbols, or a combination thereof, which in commercial advertising or promotion,
 5 misrepresented the nature, characteristics, or qualities of Plaintiffs and the National Class Members'
 6 services or commercial activities.

7 77. In acting as alleged above, Defendants also violated section 43(a) of the Lanham Act (15
 8 U.S.C. § 1125(a)(1)(B)), in connection with on-line travel and booking services, by using in commerce
 9 false designations of origin, false or misleading descriptions of fact, or false or misleading representations
 10 of fact, which in commercial advertising or promotion, misrepresented the nature, characteristics, or
 11 qualities of Plaintiffs and the National Class Members' services or commercial activities.

12 78. Defendants' misrepresentations and actions in violation of 15 U.S.C. § 1125(a)(1)(B)
 13 proximately caused an injury to a commercial interest in sales or business reputation of Plaintiffs and the
 14 National Class Members.

15 79. Defendants' misrepresentations and actions in violation of 15 U.S.C. § 1125(a)(1)(A) have
 16 also deprived and will continue to deprive Plaintiffs and the National Class Members of the ability to
 17 control the consumer perception of their products and services offered under their names and marks,
 18 placing the valuable reputation and goodwill of Plaintiffs and the National Class Members in the hands of
 19 Defendants.

20 80. Defendants had direct and full knowledge of Plaintiffs and the National Class Members'
 21 prior use of and rights in their names and marks before the acts complained of herein. The knowing,
 22 intentional and willful nature of the acts set forth herein renders this an exceptional case under 15 U.S.C.
 23 § 1117(a).

24 81. Accordingly, pursuant to 15 U.S.C. § 1117, Plaintiffs and the National Class Members are
 25 entitled to recover: (1) Defendants' profits, or an amount that is adequate, which the Court finds to be just
 26 according to the circumstances of the case, as compensation; (2) the damages sustained by Plaintiffs and
 27 the National Class Members, in a sum above the amount found as actual damages, not exceeding three
 28 times such amount; (3) the costs of the action; and (4) reasonable attorney fees should the Court find this

to be an exceptional action.

82. As a result of Defendants' aforesaid conduct and in addition to other damages, Plaintiffs and the National Class Members have suffered the continuing loss of the goodwill and reputation established by their names and marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Plaintiffs and the National Class Members have no adequate remedy at law. Plaintiffs and the National Class Members will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

THIRD CLAIM FOR RELIEF

Unfair Competition – Violations of California

Business & Professions Code §§ 17200, et seq.

(By Buckeye Tree Lodge and the California Sub-Class Members Against All Defendants)

83. Plaintiffs incorporate every preceding paragraph as if fully set forth herein.

84. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Buckeye Tree Lodge, the California Sub-Class Members, consumers and the general public. Buckeye Tree Lodge seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5.

85. Defendants' activities, as alleged herein, are violations of federal and California law, and constitute unfair competition and unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

86. Buckeye Tree Lodge and the California Sub-Class Members have been personally aggrieved by Defendants' unfair competition and unlawful business acts and practices as alleged herein, including but not necessarily limited to, by the loss of money or property.

87. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Buckeye Tree Lodge and the California Sub-Class Members are entitled to disgorgement and restitution of the income that Defendants earned during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable law; and an award of costs.

88. As a result of Defendants' aforesaid conduct and in addition to other damages, Buckeye Tree Lodge and the California Sub-Class Members have suffered the continuing loss of the goodwill and reputation established by their names and marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Buckeye Tree Lodge and the California Sub-Class Members have no adequate remedy at law. Buckeye Tree Lodge and the California Sub-Class Members will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct.

FOURTH CLAIM FOR RELIEF

False Advertising— Violations of California

Business & Professions Code §§ 17500, et seq.

(By Buckeye Tree Lodge and the California Sub-Class Members Against All Defendants)

89. Plaintiffs incorporate every preceding paragraph as if fully set forth herein.

90. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Buckeye Tree Lodge, the California Sub-Class Members, consumers and the general public. Buckeye Tree Lodge seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5.

91. Defendants' activities, as alleged herein, are violations of federal and California law, and constitute false advertising in violation of California Business & Professions Code §§ 17500, *et seq.*

92. Buckeye Tree Lodge and the California Sub-Class Members have been personally aggrieved by Defendants' false advertising as alleged herein, including but not necessarily limited to, by the loss of money or property.

93. Pursuant to California Business & Professions Code §§ 17500, *et seq.*, Buckeye Tree Lodge and the California Sub-Class Members are entitled to disgorgement and restitution of the income that Defendants earned during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable law; and an award of costs.

94. As a result of Defendants' aforesaid conduct and in addition to other damages, Buckeye Tree Lodge and the California Sub-Class Members have suffered the continuing loss of the goodwill and

1 reputation established by their names and marks. This continuing loss of goodwill cannot be properly
 2 calculated and thus constitutes irreparable harm and an injury for which Buckeye Tree Lodge and the
 3 California Sub-Class Members have no adequate remedy at law. Buckeye Tree Lodge and the California
 4 Sub-Class Members will continue to suffer irreparable harm unless this Court enjoins Defendants'
 5 conduct.

6 **FIFTH CLAIM FOR RELIEF**

7 **Unjust Enrichment and Restitution**

8 **(By Buckeye Tree Lodge and the California Sub-Class Members Against All Defendants)**

9 95. Plaintiffs incorporate every preceding paragraph as if fully set forth herein.

10 96. In acting as alleged above, Defendants have been unjustly enriched in that Defendants have
 11 knowingly benefitted at the expense of Buckeye Tree Lodge and the California Sub-Class Members in a
 12 manner such that allowance of Defendants to retain the benefits that they received would be unjust.

13 97. Buckeye Tree Lodge and the California Sub-Class Members are entitled to disgorgement
 14 and restitution of the income that Defendants earned during a period that commences four years prior to
 15 the filing of this Complaint; a temporary and permanent injunction requiring Defendants to refrain from
 16 their unlawful activities; an award of attorneys' fees pursuant to California Code of Civil Procedure §
 17 1021.5 and other applicable law; and an award of costs.

18 98. As a result of Defendants' aforesaid conduct and in addition to other damages, Buckeye
 19 Tree Lodge and the California Sub-Class Members have suffered the continuing loss of the goodwill and
 20 reputation established by their names and marks. This continuing loss of goodwill cannot be properly
 21 calculated and thus constitutes irreparable harm and an injury for which Buckeye Tree Lodge and the
 22 California Sub-Class Members have no adequate remedy at law. Buckeye Tree Lodge and the California
 23 Sub-Class Members will continue to suffer irreparable harm unless this Court enjoins Defendants'
 24 conduct.

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IX. PRAYER FOR RELIEF

99. Plaintiffs and the Class pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Action Certification

1. That Plaintiffs' claims be certified as a class action under Federal Rule of Civil Procedure 23;
2. That the Court certify the National Class; and
3. That the Court certify the California Sub-Class.

As to the First Claim For Relief

(False Affiliation, the Lanham Act (15 U.S.C. § 1125(a)(1)(A) violations)

1. Defendants' profits, or an amount that is adequate, which the Court finds to be just according to the circumstances of the case, as compensation, pursuant to 15 U.S.C. § 1117;
2. The damages sustained by Plaintiffs and the National Class Members, in a sum above the amount found as actual damages, not exceeding three times such amount, pursuant to 15 U.S.C. § 1117;
3. For temporary and permanent injunctive relief;
4. The costs of the action pursuant to 15 U.S.C. § 1117;
5. For reasonable attorneys' fees pursuant to 15 U.S.C. § 1117; and
6. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Claim For Relief

(False Advertising, Lanham Act (15 U.S.C. § 1125(a)(1)(B) violations)

1. Defendants' profits, or an amount that is adequate, which the Court finds to be just according to the circumstances of the case, as compensation, pursuant to 15 U.S.C. § 1117;
2. The damages sustained by Plaintiffs and the National Class Members, in a sum above the

1 amount found as actual damages, not exceeding three times such amount, pursuant to 15
2 U.S.C. § 1117;

3. For temporary and permanent injunctive relief;
4. The costs of the action pursuant to 15 U.S.C. § 1117;
5. For reasonable attorneys' fees pursuant to 15 U.S.C. § 1117; and
6. For such other and further relief as the Court may deem equitable and appropriate.

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8 As to the Third Claim For Relief

9 (Unfair Competition)

10. The disgorgement of any and all income in connection with Defendants' on-line booking,
11 according to proof;
12. For restitution of income to Buckeye Tree Lodge and all California Sub-Class Members
13 and prejudgment interest from the day such amounts were due and payable;
14. For the appointment of a receiver to receive, manage and distribute any and all funds
15 disgorged from Defendants and determined to have been wrongfully acquired by
16 Defendants as a result of violations of California Business & Professions Code §§ 17200,
17 *et seq.*;
18. For all actual, consequential, and incidental losses and damages, according to proof;
19. For temporary and permanent injunctive relief;
20. For reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure §
21 1021.5; and
22. For such other and further relief as the Court may deem equitable and appropriate.

23

24 As to the Fourth Claim For Relief

25 (False Advertising)

26. The disgorgement of any and all income in connection with Defendants' on-line booking,
27 according to proof;

- 1 2. For restitution of income to Buckeye Tree Lodge and all California Sub-Class Members
- 2 and prejudgment interest from the day such amounts were due and payable;
- 3 3. For the appointment of a receiver to receive, manage and distribute any and all funds
- 4 disgorged from Defendants and determined to have been wrongfully acquired by
- 5 Defendants as a result of violations of California Business & Professions Code §§ 17500,
- 6 *et seq.*;
- 7 4. For all actual, consequential, and incidental losses and damages, according to proof;
- 8 5. For temporary and permanent injunctive relief;
- 9 6. For reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure §
- 10 1021.5; and
- 11 7. For such other and further relief as the Court may deem equitable and appropriate.

12

13 As to the Fifth Claim For Relief

14 (Unjust Enrichment)

- 15 1. The disgorgement of any and all income in connection with on-line booking, according to
- 16 proof;
- 17 2. For restitution of income to Buckeye Tree Lodge and all California Sub-Class Members
- 18 and prejudgment interest from the day such amounts were due and payable;
- 19 3. For the appointment of a receiver to receive, manage and distribute any and all funds
- 20 disgorged from Defendants and determined to have been wrongfully acquired by
- 21 Defendants;
- 22 4. For all actual, consequential, and incidental losses and damages, according to proof;
- 23 5. For temporary and permanent injunctive relief;
- 24 6. For reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure §
- 25 1021.5; and

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7. For such other and further relief as the Court may deem equitable and appropriate.

Dated: November 9, 2018

PATTERSON LAW GROUP

By: /s/ Allison H. Goddard

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Attorneys for Plaintiffs and the Class

1 **CERTIFICATE OF SERVICE**
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The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served November 9, 2018, with a copy of this document via the Court's CM/ECF system. I certify that all parties in this case are represented by counsel who are CM/ECF participants.

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7 /s/ Allison H. Goddard
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